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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM THEADORE GLEASON,

Defendant and Appellant.

B232800

(Los Angeles County
Super. Ct. No. VA114918)

APPEAL from a judgment of the Superior Court of Los Angeles,
Peter Paul Espinoza, Judge. Affirmed.

Jerome McGuire, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, David C. Cook and Baine P. Kerr, Deputy Attorneys General, for Plaintiff and Respondent.

William Theadore Gleason was convicted following a jury trial of making a criminal threat and misdemeanor battery on a cohabitant. On appeal Gleason contends the trial court abused its discretion in denying his motion to reduce the felony conviction for making a criminal threat to a misdemeanor, failed to state reasons for denying probation and sentenced him in violation of Penal Code section 654.¹ We affirm.²

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

Gleason was charged by information with eight felony counts involving two victims, Luree Thomas and Jinele McIntire. As to Thomas, the information alleged Gleason had committed four felonies on February 11, 2010: assault with a deadly weapon (§ 245, subd. (a)(1), count 1), making a criminal threat (§ 422, count 2), false imprisonment (§ 236, count 3) and dissuading a witness (§ 136.1, subd. (b)(1), count 4). The information also specially alleged Gleason had personally inflicted great bodily injury on Thomas within the meaning of section 12022.7, subdivision (a).

As to McIntire, the information alleged Gleason had inflicted corporal injury to a cohabitant on three separate occasions (§ 273.5, subd. (a), counts 6, 7 and 8) and also made a criminal threat (count 5) during one of the domestic violence incidents.

Gleason pleaded not guilty and denied the special allegation.

2. Summary of Evidence Presented at Trial

McIntire met Gleason in June 2009 through his friend and coworker Thomas. Within a month McIntire and Gleason were romantically involved, and McIntire moved into Gleason's Lakewood home. They had a volatile and physically abusive relationship.

¹ Statutory references are to the Penal Code.

² The abstract of judgment incorrectly states Gleason's conviction was by plea. We order it corrected.

a. *Count 8 – corporal injury to a cohabitant in late January 2010*

In late January 2010 Gleason attacked McIntire in their bedroom. He yelled at McIntire, choked her with his forearm and placed a pillow over her face as she was lying in bed. McIntire lost consciousness for a time.

b. *Count 7 – corporal injury to a cohabitant on February 16, 2010*

While driving home from Las Vegas on February 16, 2010, Gleason and McIntire began arguing. Gleason punched McIntire in the ear, causing it to bruise. McIntire told Gleason to let her out of the car so she could find her own way home. Gleason said he could just pull over and bury McIntire in the desert, and no one would ever know.

c. *Counts 5 and 6 – criminal threat and corporal injury to a cohabitant on March 3, 2010*

On the evening of March 3, 2010 McIntire was cooking dinner when Gleason arrived home from work. After drinking two bottles of wine, Gleason became upset over how McIntire was preparing the meal. McIntire wanted Gleason out of the kitchen, so she walked to the bedroom, knowing he would follow her. Once in the bedroom, however, Gleason either struck McIntire in the head or threw her onto the bed. Gleason then pressed his knee against her chest, placed his forearm against her throat and began choking McIntire as she was lying on her back. After Gleason released McIntire and as she was walking back to the kitchen, he said to her, “You better hope that you make it out of here alive tonight.”

McIntire was frightened and believed Gleason would carry out his threat. As she continued to make Gleason’s dinner, he returned to the kitchen. Gleason became angry when McIntire poured him milk in a plastic cup, knowing he preferred a glass. Gleason began yelling at McIntire and poked her four to eight times in her upper chest with a fork.³ McIntire served Gleason his dinner in the bedroom so she could return to the kitchen and plan her escape. McIntire boiled water, which she placed in pans on the floor, and poured oil onto the floor to make it difficult for Gleason to follow her.

³ Photographs of McIntire’s injuries were shown to the jury.

McIntire then fled through a side door and sought help from neighbors, who telephoned the police.

McIntire continued to live in Gleason's house following his arrest. During that time McIntire spoke to Gleason on the telephone and visited him in jail. McIntire used Gleason's checkbook to pay his bills. McIntire later wrote an unauthorized check on Gleason's account, signing his name, for which she was granted immunity from prosecution. McIntire admitted to being "a methamphetamine addict" and to having used the drug as part of her relationship with Gleason. She acknowledged having used methamphetamine within 30 days of her trial testimony.

d. *Counts 1 through 4 – assault with a deadly weapon, making a criminal threat, false imprisonment and dissuading a witness from reporting a crime*

Thomas and Gleason were friends and had worked together for 22 years.

On February 11, 2010 Thomas went to Gleason's house to retrieve a cell phone McIntire had borrowed. The prior night Thomas and Gleason had spoken at length about how to find McIntire and persuade her to return to Gleason's home, which she had fled after one of their domestic violence incidents. Gleason went to the bedroom for the cell phone, while Thomas sat on a stool outside the kitchen and waited.

When Gleason returned, he suddenly punched Thomas in the face, knocking her to the floor. Gleason stood over her holding an amplifier and threatened to kill her. Gleason then dragged Thomas by her hair into the living room, choked her with his hands and repeatedly struck her head with a ballast or metal box. Throughout the attack, Gleason cursed Thomas and demanded she tell him where to find McIntire. Gleason then told Thomas, if she wanted to leave his house alive, she would have to find out where McIntire was staying in Las Vegas and drive him there. Gleason also threatened to kill Thomas if she reported his attack to the police. Gleason ultimately allowed Thomas to leave his home. Thomas later went to the hospital and was treated for a black eye, bruises and a swollen forehead.⁴

⁴ Photographs of Thomas's injuries were shown to the jury.

Thomas admitted she and Gleason were involved in a financial dispute around the time of the attack. Gleason claimed Thomas had misappropriated funds, which Thomas denied. Thomas also acknowledged that she, Gleason and McIntire had used methamphetamine in the past.

Gleason neither testified nor presented other evidence in his defense.

Following the presentation of evidence, defense counsel moved under section 17, subdivision (b), to have the charged felonies involving McIntire as the victim reduced to misdemeanors. The trial court took the motion under submission pending the verdict.

3. Verdict and Sentencing

The jury convicted Gleason of making a criminal threat to McIntire on March 3, 2010, as charged in count 5, and battery on McIntire as a cohabitant on March 3, 2010, a lesser included offense of corporal injury to a cohabitant as charged in count 6. The jury acquitted Gleason on all remaining counts.

Both orally and in a sentencing memorandum defense counsel urged the court to reduce the felony offense of making a criminal threat to a misdemeanor pursuant to section 17, subdivision (b). Counsel also argued Gleason's criminal threat and battery offenses constituted a single, indivisible course of conduct and the sentence for the two offenses was subject to section 654. The sentencing memorandum proposed imposition of the lower term, 16-month sentence for the felony offense. At the hearing itself defense counsel urged the court to impose the middle term of two years. Gleason's counsel did not seek a grant of probation.

The prosecutor initially addressed the motion to reduce the felony conviction to a misdemeanor. The trial court interrupted, stating, "This is not a case in which I would exercise my discretion under [section] 17, [subdivision] (b)." The prosecutor then argued section 654 did not apply and the court should sentence Gleason to the three-year upper term. When the court invited defense counsel to respond, he declined, saying, "You have heard the evidence."

After argument on the issue of presentence custody credits, the trial court sentenced Gleason to the two-year middle term for making a criminal threat and a

concurrent term of one year for misdemeanor battery. Explaining its sentencing decision the court stated, “Most important, it seems to me the things I know about this defendant is a fact that I can’t take into consideration. I said this at the time of his acquittal on the charges as to Ms. Thomas, had that case been tried to me, I would have convicted him in a heartbeat. There is no other logical explanation for what happened to her other than he beat the crap out of her, which required medical attention. There is no doubt in my mind that that is what occurred. However, the jury acquitted him, and I am not allowed to take that fact into consideration as a circumstance in aggravation. [Defense counsel] clearly points out that that is the case. This is clearly not a case for probation. The Defendant is eligible for probation. I would never grant him probation in this case. He is clearly not someone, based on his history of drug use and his violence – well, strike that. He is clearly not someone who is worthy of consideration for probation. However, the court is loathe to make the determination that there are factors in mitigation and factors in aggravation that simply neither preponderates, and the court is going to sentence the defendant to the mid term in state prison of two years.”

DISCUSSION

1. The Trial Court Did Not Abuse Its Discretion by Refusing To Reduce the Felony Conviction for Making a Criminal Threat to a Misdemeanor

Section 17, subdivision (b), authorizes the trial court to reduce to a misdemeanor an offense originally charged as a felony if the charging statute—here, section 422, making a criminal threat—provides alternative felony or misdemeanor punishment. (See *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 974 & fn. 4.) We review the court’s decision under section 17, subdivision (b), for an abuse of discretion. (*Id.* at pp. 979-980.)

In exercising its discretion under section 17, subdivision (b), the trial court must examine the nature and circumstances of the offense, the defendant’s attitude toward the offense, the defendant’s behavior in court and the general sentencing objectives of

rule 4.410 of the California Rules of Court.⁵ In the absence of a showing by the defendant that his or her sentence was unreasonable, the trial court is presumed to have acted to achieve legitimate sentencing objectives and its decision will not be set aside. (*People v. Superior Court (Alvarez)*, *supra*, 14 Cal.4th at pp. 977-978.)

Gleason has not met his burden of showing the trial court's decision was irrational or arbitrary. The court's failure to properly identify specific factors in its ruling denying the request to reduce the felony conviction to a misdemeanor, standing alone, is insufficient to demonstrate reversible error. (See *People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 836 [trial court is presumed to have considered all relevant factors unless the record affirmatively shows otherwise].) The court had presided over the jury trial, observed Gleason's attitude and behavior, heard and considered arguments of counsel and reviewed the probation report prior to sentencing. It was entitled to rely on its assessment of those materials in exercising its broad discretion. To the extent Gleason simply repeats the contentions he made in his request before the trial court (the circumstances underlying the conviction were not egregious; Gleason's criminal record was minimal; he was a productive member of society), we do not reweigh those factors. (See *People v. Superior Court (Alvarez)*, *supra*, 14 Cal.4th at pp. 977-978.)

Gleason argues the court's comment that it disagreed with the verdicts on the counts involving Thomas demonstrates it denied his request based on personal animus. Gleason has forfeited any claim of judicial bias by failing to make an appropriate objection in the trial court. (See *People v. Scott* (1997) 15 Cal.4th 1188, 1207; *People v. Hines* (1997) 15 Cal.4th 997, 1040-1041.) In any event, the record does not support Gleason's claim. While the trial court expressed its disagreement with those verdicts, the record clearly shows the court maintained its impartiality; indeed it even advised counsel it would not allow its belief Gleason was wrongly acquitted to influence its sentencing decision.

⁵ References to rules are to the California Rules of Court.

2. *The Trial Court Did Not Abuse Its Discretion in Denying Probation*

a. *Gleason has forfeited his claim the trial court erred in failing to state its reasons for not granting probation*

Generally the trial court must state its reasons for denying probation. (Rule 4.406(b)(2).) The trial court failed to do so. Nonetheless, because Gleason did not object in the trial court, he has forfeited this contention on appeal. (*People v. Scott, supra*, 9 Cal.4th 331, 335 [forfeiture rule applies to “claims involving the trial court’s failure to properly make or articulate its discretionary sentencing choices” including its failure “to state any reasons or give a sufficient number of valid reasons”]; see *People v. Morales* (2008) 168 Cal.App.4th 1075, 1084.) “Although the court is required to impose sentence in a lawful manner, counsel is charged with understanding, advocating, and clarifying permissible sentencing choices at the hearing. Routine defects in the court’s statement of reasons are easily prevented and corrected if called to the court’s attention. As in other waiver cases, we hope to reduce the number of errors committed in the first instance and preserve the judicial resources otherwise used to correct them.” (*Scott*, at p. 353.)

Gleason argues the forfeiture rule should not be applied because an objection would have been futile. He contends, in light of the court’s unequivocal rejection of probation and its refusal to reduce the felony conviction to a misdemeanor, defense counsel reasonably understood the court would not give serious consideration to a request for probation and, for that reason, counsel instead urged the court to impose the lower term.

It is true the forfeiture rule does not apply when the trial court fails “to give the parties any meaningful opportunity to object.” (*People v. Gonzalez* (2003) 31 Cal.4th 745, 752.) Here, when the trial court announced its decision to deny Gleason probation even though he was eligible, it was incumbent upon defense counsel to seek clarification as to the reasons for the denial of probation. The opportunity to do so was there. This is precisely the kind of readily correctible error the forfeiture rule is intended to prevent.

b. *Denial of probation was not an abuse of its discretion*

Gleason also contends the trial court abused its discretion in refusing to order probation. Our review of a trial court's decision to grant or deny probation is deferential. "The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120; see § 1170, subd. (b); rule 4.414.) "Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation." (*Carbajal*, at p. 1120.) "[A] grant of probation is not a matter of right but an act of clemency." (*People v. Covington* (2000) 82 Cal.App.4th 1263, 1267.) "Unless the record affirmatively shows otherwise, a trial court is deemed to have considered all relevant criteria in deciding whether to grant or deny probation or in making any other discretionary sentencing choice. (Rule 4.409.)" (*People v. Weaver* (2007) 149 Cal.App.4th 1301, 1313.)

Prior to sentencing the trial court indicated it had read and considered the probation report, the People's sentencing memorandum and the defense sentencing memorandum. According to the probation report, Gleason's criminal record consisted of a 1986 conviction for possession of a controlled substance for which he was sentenced to county jail and placed on probation, a 1989 driving under the influence conviction for which he was placed on summary probation, a 2007 misdemeanor vandalism conviction for which he was placed on three years of probation and a 2008 misdemeanor conviction for obstructing an officer in the performance of official duties for which he was sentenced to 90 days in jail and placed on three years of probation.

The People argued Gleason's offenses and the circumstances surrounding them were characterized by violence and the threat of great bodily harm (rule 4.414(1)); Gleason used a weapon (fork) to inflict harm in this case (rule 4.414(a)(2)); McIntire, a victim of domestic abuse, was vulnerable (rule 4.414(a)(3)); Gleason inflicted physical and emotional injury (rule 4.414 (4)); and Gleason's criminal conduct was becoming increasingly violent (rule 414(b)(1)).

Defense counsel argued Gleason was 56 years old, had a job and owned a house. His convictions for making a criminal threat and battery on a cohabitant were not serious, given that both Gleason and McIntire had been drinking alcohol and her injuries were minor. Counsel also disputed that McIntire was vulnerable. With respect to Gleason's criminal history, counsel characterized it as minimal, primarily misdemeanor convictions. Counsel further argued Gleason's single prior felony conviction was remote; contrary to the probation report, Gleason had never been convicted of driving under the influence; and he was not on probation at the time of the current offenses.

The trial court's decision to deny Gleason probation was well within its broad discretion. The court properly considered Gleason's background, the arguments of counsel and the trial record and decided against probation after balancing the proffered factors in mitigation and aggravation. There was nothing arbitrary or capricious about the decision.

3. Gleason's Sentence Does Not Violate Section 654

Section 654 prohibits separate punishment for multiple offenses arising from the same act or from a series of acts constituting an indivisible course of criminal conduct. (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507; *People v. Latimer* (1993) 5 Cal.4th 1203, 1206.)⁶ “Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses, but not for more than one.” (*Rodriguez*, at p. 507; accord, *People v. Lewis* (2008) 43 Cal.4th 415, 519.)

Generally, the trial court has broad discretion in determining whether a defendant had multiple criminal objectives independent of, and not merely incidental to, each other

⁶ Section 654, subdivision (a), provides: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.”

for purposes of section 654. On appeal we will uphold the court's express or implied finding a defendant held multiple criminal objectives if it is supported by substantial evidence. (See *People v. Osband* (1996) 13 Cal.4th 622, 730-731; *People v. Blake* (1998) 68 Cal.App.4th 509, 512.)

Gleason contends the trial court should have stayed imposition of sentence for misdemeanor battery on a cohabitant because his "poking of McIntire with a fork was part and parcel" of the criminal threat; his use of the fork demonstrated to McIntire the seriousness of the threat.

Gleason's effort to conflate the two crimes lacks merit. To be sure, Gleason engaged in an extended series of physically and emotionally abusive acts on March 3, 2010. Nonetheless, substantial evidence supports the implied finding his conduct on that night was divisible, involving separate acts committed with separate objectives: Gleason threatened McIntire when she was leaving the couple's bedroom after he had either punched or hit her and then choked her; only after both Gleason and McIntire had returned to the kitchen did he stab her with the fork, apparently angered by her failure to provide him with a glass rather than a cup. The battery was thus separated from the criminal threat by time, location and triggering motive.

"To accept . . . a broad, overriding intent and objective to preclude punishment for otherwise clearly separate offenses would violate [section 654's] purpose to insure that a defendant's punishment will be commensurate with his culpability." (*People v. Perez* (1979) 23 Cal.3d 545, 552.) "It is one thing to commit a criminal act in order to accomplish another; [section 654] applies there. But that section cannot, and should not, be stretched to cover gratuitous violence or other criminal acts far beyond those reasonably necessary to accomplish the original offense." (*People v. Nguyen* (1988) 204 Cal.App.3d 181, 191.) "[A]t some point the means to achieve an objective may become so extreme they can no longer be termed 'incidental' and must be considered to express a different and more sinister goal than mere successful commission of the original crime." (*Ibid.*) That is the case here. The trial court did not err in refusing to stay Gleason's sentence for battery on a cohabitant under section 654.

DISPOSITION

The judgment affirmed. The superior court is directed to prepare a corrected abstract of judgment to reflect Gleason was convicted by jury rather than by plea and forward it to the Department of Corrections and Rehabilitation.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.